

Court of Appeals, State of Michigan

ORDER

People of MI v Duane Robert Passino

Docket No. 286660

LC No. 08-003788-FH

Stephen L. Borrello
Presiding Judge

Peter D. O'Connell

Alton T. Davis
Judges

The motion for immediate consideration is GRANTED.

The motion to clarify this Court's March 12, 2009 order remanding this case to the trial court is also GRANTED. The trial court is required to decide whether to grant or deny defendant's motion for a new trial based on the issue of alleged improper prosecutorial intimidation of a witness underlying the motion to remand. This requirement is implicit in the March 12, 2009 order remanding this matter to the trial court not only for an evidentiary hearing but "to allow defendant to move for a new trial on that basis." Further, background legal principles contemplate that the decision whether to grant or deny a motion for a new trial should initially be made by the trial court because this Court reviews such a decision for an abuse of discretion. See, e.g., *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008).

The trial court shall decide whether to grant or deny defendant's motion for a new trial within 28 days of the certification of this order by the Clerk of this Court. Defendant shall file the trial court's order deciding this motion with the Clerk of this Court within 14 days after entry.

Defendant may file a supplemental brief pertaining to the trial court's order deciding the motion for a new trial within 21 days after entry of such an order or 21 days after the transcript of the May 28, 2009 evidentiary hearing is filed, whichever is later. Plaintiff may file a supplemental brief in response.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN 17 2009
Date

Sandra Schultz Mengel
Chief Clerk